

GAHC010193522022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6246/2022

MANAB DEKA
S/O. LT. TILAK CHANDRA DEKA, R/O. TILAK MANSION, 125, RAJGARH
ROAD, ABOVE INDICASH ATM, GUWAHATI, KAMRUP (M), ASSAM, PIN-
781007.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(HIGHER) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR

GOVT. OF ASSAM EDUCATION (HIGHER) DEPTT.
KAHILIPARA
GUWAHATI-781019.

3:THE GOVERNING BODY

REP. BY THE PRESIDENT
PRAGJYOTISH COLLEGE
SANTIPUR
GUWAHATI-781009.

4:INQUIRY COMMITTEE
REP. BY ITS CHAIRPERSON
PRAGJYOTISH COLLEGE
SHANTIPUR
GUWAHATI-781009.

5:PRAGJYOTISH COLLEGE
REP. BY PRINCIPAL

SHANTIPUR
GUWAHATI-781009.

6:PRINCIPAL

PRAGJYOTISH COLLEGE SHANTIPUR
GUWAHATI-781009

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 11.04.2023

Heard Mr. K.N. Choudhury, the learned Senior Counsel assisted by Mr. R.M. Deka appearing on behalf of the petitioner. Mr.D. Upamanyu, the learned counsel appears on behalf of the respondent Nos. 1 and 2 and Mr. D. Nath, the learned counsel appears on behalf of the respondent Nos. 3, 4, 5 & 6.

2. The instant writ petition has been filed challenging the suspension order dated 8/4/2022 whereby the petitioner was suspended pending drawal of departmental proceedings on the basis of a Resolution No. 2 dated 03/03/2021 of the Governing Body of the Pragjyotish College, Santipur, Guwahati-781009 on the ground of his unauthorised absence from duties and being involved in immoral activities at an outstation location on a full working day.

3. It further appears from the records that on 25/3/2021, almost more than a year prior to the order of suspension dated 8/4/2022, the memorandum of charge/chargesheet was issued to the petitioner. The charge-sheet reflects that in respect to penalties prescribed in Clause (i) to Clause (iii) of Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964 (for short 'the Rules of 1964'), the petitioner was asked to show cause in respect to the charges levelled against the

petitioner.

4. A perusal of Rule 7, more particularly Rule 7(i), 7(ii) and 7 (iii) of the Rules of 1964 stipulates the respective penalties which may be imposed upon the delinquent employee on the basis of the enquiry report. Taking into account its relevance, Rule 7(i), (ii) and (iii) are reproduced herein below :-

“7. Nature of penalties.—The following penalties may for good and sufficient reason and as hereinafter provided, be imposed, on a Government servant, namely --

(i) Censure ;

(i) Withholding of increments of promotion;

(ii) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government, or any local or other authority to whom services of a Government servant had been lent.”

5. It would also be relevant herein to take note of Rule 9(11) of the Rules of 1964 which stipulates what are minor penalties. It has been mentioned that the penalties specified in Clauses (i) to (iii) of Rule 7 of the Rules of 1964 are minor penalties.

6. Today, the learned counsel appearing on behalf of the Higher Education Department had pursuant to the order dated 20/3/2023 of this Court, produced the order by which the Enquiry Officer as well as the Presenting Officer were appointed on 13/1/2023. It further transpires from the documents which were placed that the petitioner was duly informed that on 25/2/2023 he can inspect documents, on 28/2/2023, the petitioner has to be present before the Enquiry Officer. Further to the said documents, the enquiry report dated 17/3/2023 have also been placed before this Court.

7. From the enquiry report dated 17/3/2023 which the learned counsel for the respondents have stated that the same had been already submitted to the Director of Higher Education, it reveals that the charge of unauthorised absence against the

petitioner was partially proved and as regards the charge of involvement in immoral activities which have tarnished the image of the college as well as the teaching fraternity was fully proved.

8. The learned counsel appearing on behalf of the Director of Higher Education as well as the learned counsel appearing on behalf of the respondent Nos. 3, 4, 5 and 6 also submitted that pursuant to the enquiry report, a notice has been sent along with the enquiry report seeking the petitioner's reply. On the other hand, the learned counsel for the petitioner submitted that no such communication has been received by the petitioner as per their information.

9. Be that as it may, it is no longer *res integra* that suspension cannot be construed to be a penalty and an order of suspension is made so that the departmental proceedings can be held without any interference.

10. In the instant case, the enquiry report had already been submitted and the penalty in respect to which the petitioner had been put to notice being only minor penalties relating to censure or withholding of increments of promotion or recovery from pay etc; this Court finds no reason as to why there should be further continuation of the suspension of the petitioner. Under such circumstances, this Court holds that the further continuation of the suspension in terms with the order dated 8/4/2022 would be unfair, unjust as well as unreasonable for which this Court directs the concerned respondent authorities that the petitioner be reinstated forthwith to his post upon a certified copy of the instant order being served upon the Director of Higher Education.

11. Before parting with the records, this Court would further like to make it clear that the instant order shall not be construed in any manner touching upon the enquiry or the enquiry report and the disciplinary authority shall be entitled to pass such orders as deemed fit in accordance with law. The said observations shall not also preclude the petitioner to take such course of action as permissible under law, if the petitioner is

aggrieved by such action of the Disciplinary Authority.

12. The documents so produced by the learned counsel for the Higher Education Department is kept on record and marked with the letter "X".

13. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant